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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. [redacted] 243

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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RAY B. JONES

May, 1969

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. ----------

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PREVIOUS TREATMENT OF THIS CAUSE.

This Petition is for review of an opinion and judgment of the United States Court of Appeals, Tenth Circuit, copy of which opinion is appended hereto (Appendix A) and is reported in 406 F.2d 1303, such judgment and opinion affirmed, a judgment and opinion of the United States District Court for the Western District of Oklahoma, which opinion and judgment are appended hereto (Appendix B and BI) and is reported in 277 F.Supp. 366.

STATEMENT OF GROUNDS FOR INVOKING JURISDICTION

Plaintiffs seek review of an opinion and judgment of the United States Court of Appeals, Tenth Circuit, dated and filed on February 24, 1969, rehearing was denied on April 2, 1969. This Petition is filed under the authority of 28 U.S.C. § 1254(1), which confers jurisdiction to review the opinion of the Tenth Circuit by certiorari.

THE QUESTION PRESENTED FOR REVIEW

The question here presented for review is whether or not state regulatory agencies shall be permitted to regulate the production of oil and gas from Federal lands when a branch of the United States Government exercises regulatory control over the same operations.

PROVISIONS OF THE CONSTITUTION, STATUTES, AND REGULATIONS INVOLVED

The United States Constitution provides in Article IV, Section 3, Clause 2, that the Congress shall have authority to dispose of and regulate Federal lands. We quote such Section as follows:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Congress, acting under this constitutional provision, has adopted the Federal Leasing Act regulating the leasing of Federal lands for oil and gas production. This Act, found at 30 U.S.C. 181 through 263, is rather lengthy and the full text thereof is included under separate cover in Envelope Part of the appendix (Appendix C). In 43 U.S.C. § 2, Congress provided that the Secretary of the Interior or those delegated by him make *regulations* for the management of public lands. We quote such statute:

> "The Secretary of the Interior or such officer as he may designate shall perform all executive duties appertaining to the surveying and sale of the public

lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land and the issuing of patents for all grants of land under the authority of the Government."

Under the authority and admonition of this section, the Secretary has promulgated sweeping rules regulating oil and gas operations on public domain lands. These regulations are found in 30 C.R.F. 221. They are detailed and somewhat lengthy and the entire text of this Section is submitted under separate cover in Envelope Part of appendix (Appendix D).

The introduction to these regulations is especially pertinent. It recites in part:

> *"The regulations in this part will govern the development and production of deposits of oil,* gas and casinghead or natural gasoline, including propane, butane, and other hydrocarbons, and fluids, *and lands containing such deposits owned or controlled by the United States . . ."* (Emphasis supplied.)

In addition to this broad language in the introduction, Section 221.11 is most pertinent and to the following effect:

> "The supervisor shall approve well-spacing and well-casing programs determined to be necessary for the proper development of the leases and assist and advise lessees in the planning and conduct of tests and experiments for the purpose of increasing the efficiency of operations."*

---

*We call the Court's attention to the fact that Section 221.11 in the official copy of the Code of Federal Regulations furnished to the writers of this brief from the United States Government Printing Office has a misprint for Section 221.11 showing such section, although following 221.10, as being 211.11.

The Oklahoma Legislature, acting in the same field as the Congress, has provided statutory authority for the Oklahoma Corporation Commission to regulate production of oil and gas. These statutes are the conservation of oil and gas law of the State of Oklahoma. The pertinent parts insofar as this litigation is concerned are 52 Oklahoma Statutes, 1961 § 87.1(a), (b) and (d). This portion of the Oklahoma Statute is rather lengthy and is included in the appendix (Appendix E).

Under these Statutes adopted by the Oklahoma Legislature, the Oklahoma Corporation Commission has adopted sweeping regulations for the production of oil and gas comparable to those adopted by the Secretary of the Interior. They are lengthy and are submitted herewith, under separate cover in Envelope Part of appendix (Appendix F).

STATEMENT OF CASE

The United States Government leased certain lands in Section 18, Township 18 North, Range 25 West, in Ellis and Roger Mills Counties, Oklahoma, to Thomas Connell. The Oklahoma regulatory body spaced the area in which the above lease was included and such order (Oklahoma Corporation Commission Order No. 51093) (Appendix G) provided that only one well could be drilled to the Tonkawa Sand formation in each Section. The Respondent herein, Phillips Petroleum Company, thereafter filed an Application with the state regulatory body for forced pooling of Federal leases in question and the regulatory body entered an order granting such forced pooling (Oklahoma Corporation Commission Order No. 54373) (Appendix H).

Thereafter, the Petitioners herein, Texas Oil & Gas Company and John H. Hill, purchased all of the properties of Thomas Connell in the area of the Federal leases, including such leases.

Phillips Petroleum Company presented the state regulatory body's order for forced pooling to the Santa Fe office of the Bureau of Land Management and asked that the order be treated and approved as an assignment to them of the Tonkawa Zone of the Federal leases. After some hesitation, the Santa Fe office of the Bureau of Land Management did approve the regulatory order as an assignment of the Tonkawa formation. This approval left the Petitioners owning the balance of the geological zones in the leases, but deprived them of the Tonkawa zone covered by such leases.

The Petitioners appealed the action of the Santa Fe office to the Director of the Bureau of Land Management, who affirmed the action. They then appealed to the Secretary of the Interior, but upon stipulation with the Respondent that it would not raise the question of failure to exhaust administrative remedies, the Petitioners brought this action in the United States District Court for the Western District of Oklahoma to quiet their title against the claims of the Respondent under the state regulatory order alleging a substantial Federal question.

The trial court denied the Petitioners relief (see opinion appended hereto and reported in 277 F.Supp. 366) and the Petitioners appealed to the Tenth Circuit. This Court affirmed the judgment of the trial court and denied a Petition for Rehearing (Order, Letter from Clerk, ad-

vising denial of Petition for Rehearing, appended hereto, Appendix I). The Petitioners thereupon filed this Petition for a Writ of Certiorari.

ARGUMENT AND AUTHORITY SUPPORTING PETITION

There is an unquestioned conflict between various state regulatory bodies acting under the authority of the state legislature and the Department of the Interior acting under the authority of the Congress by virtue of the United States Constitution, Article IV, Section 3, Clause 2.

This conflict occurs in the case here before the Court when the Oklahoma administrative agency (the Corporation Commission) purports to regulate the well spacing on public-domain lands of the United States as in the instant case. It will recur many times in the coming years, not only in Oklahoma but most especially in other oil and gas producing states, particularly in those states in the West, which have vast areas of land wherein the leasing and production of minerals is patently controlled by the Department of the Interior, but upon which various state administrative agencies are now beginning to regulate.

This conflict is demonstrated by the following article appearing in The Oklahoma Journal, a daily newspaper, published in Oklahoma City on May 20, 1969:

"LEAKING OIL PLUGS MAY COST LICENSE

"A northeast Oklahoma contractor may lose his license because of improper plugging of oil wells whose leaks are polluting the Oologah reservoir, Corporation Commissioner Nesbitt indicated Monday.

"A furor arose in Tulsa recently following newspaper reports that the old wells were flowing oil and salt water that was finding its way into the big reservoir.

"Collinsville and several rural water districts tap drinking water from Oologah now and Tulsa plans to draw millions of gallons of water from the lake in the future.

"The contractor, L. D. Cook of Copan, had the job of plugging some 800 wells under an agreement with the Army Corps of Engineers.

"The wells themselves, Nesbit said, are on government-owned land. 'The federal government takes the position that the state has no authority over what happens on its land,' he said.

"'The government ought to fix those wells. They have the money to do it.' Nesbitt said he thought the corps would see that the job is done properly in view of the publicity that has occurred." (Emphasis added.)

Undeniably, Congress has been vested by the Constitution (Art. IV, Sec. 3, Clause 2) with the power to make all rules and regulations concerning the disposition of Federally owned lands. This power has been exercised and is without limitation. [*Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 97 L.Ed. 15, 73 S.Ct. 85, *rehearing denied* 344 U.S. 910, 97 L.Ed. 702, 73 S.Ct. 326 (1952); *United States* v. *State of California*, 332 U.S. 19, 91 L.Ed. 1889, 67 S.Ct. 1658, *opinion supplemented* 332 U.S. 804, 92 L.Ed. 382, 68 S.Ct. 20, *rehearing denied* 332 U.S. 787, 92 L.Ed. 370, 68 S.Ct. 37, *petition denied* 334 U.S. 855, 92 L.Ed. 1776, 68 S.Ct. 1517 (1947); *Clayton* v. *Warlick*, 232 F.2d 699 (9th Cir., 1956)].

When this power is exercised by Congress, it is exclusive of other control. [*Griffin* v. *United States* (8th Cir., 1948), 168 F.2d 457].

We do not question the constitutionality of the various state regulatory bodies in general, but only insofar as they purport to exercise their jurisdiction over Federal land. As this Court has so aptly stated:

> "The question is whether the state orders may stand in face of the pervasive scope of federal occupation of the field." [*Northern Natural Gas Co.* v. *State Corporation Commission*, 372 U.S. 84, 9 L.Ed.2d 601, 83 S.Ct. 646, *rehearing denied* 372 U.S. 960, 10 L.Ed.2d 14, 84 S.Ct. 1011 (1962)].

This Court has never expressed itself upon the conflict of state regulatory bodies presuming to exercise their jurisdiction and control of Federal land in the face of the authority of a duly appointed Federal regulatory agency. Thus, the owners of these Federal leases are placed in the dilemma of deciding, at their peril, whether the state or the Federal Government is the ultimate arbiter over the actions on Federally owned land. It is a dilemma that demands and deserves the consideration of this Court.

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May, 1969

APPENDIX A

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Tenth Circuit
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William L. Whittaker
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JANUARY 1969 TERM

TEXAS OIL & GAS CORP., a corporation, and JOHN H. HILL, an individual,

Appellants,

vs.

No. 10059

PHILLIPS PETROLEUM COMPANY, a corporation,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

George L. Verity (Brown, Verity & Brown) for Appellants.

Edward J. Fauss and Don Jemison (Wm. J. Zeman and Loyd Minter, with them on the brief) for Appellee.

Before MURRAH, Chief Judge, BREITENSTEIN and HILL, Circuit Judges

PER CURIAM

In this federal question suit, wholly between private parties, the appellants, oil and gas lessees of federal lands in Oklahoma, collaterally attack well spacing and forced

pooling orders of the Oklahoma Corporation Commission insofar as they undertake to space and pool their federal leases. The effect of the spacing order is to establish a 640 acre spacing unit for the drilling and production of gas and gas condensates from a common source of supply. The spacing unit includes the federal oil and gas leases in question, along with privately owned and leased lands, a part of which is owned by the appellee Phillips Petroleum Company. The forced pooling order had the effect of pooling the spaced unit for the drilling of a permitted well by the lessee Phillips, the cost to be borne proportionately by the lessees in the unit. Any lessee electing not to participate in the permitted well was to be paid a lease bonus determined by the Oklahoma Corporation Commission to be $40.00 per acre. The assignors of the appellants elected not to participate and the title to their leases was transferred by operation of law to Phillips upon the payment of the prescribed lease bonus.

The appellants here succeeded to the rights of their predecessor after the election and transfer of title. They do not seek a review of the orders of the Corporation Commission nor of the administrative orders of the Bureau of Land Management which approved the transfer; rather, they collaterally attack only that portion of the Oklahoma Corporation's well spacing and pooling orders which purport to space the federal leases within the unit and to transfer the title of their leases to Phillips Petroleum Company upon their election not to participate in the drilling of the permitted well. They deny that either the Secretary of the Interior or any of his subordinates are necessary or proper parties to the litigation and say that the judgment sought will merely determine the rights of the parties to the suit. They agree that state law governs matters which concern only individuals but insist that the spacing order directly affects the interest of the United States and that as federal lessees they have standing to assert the federal interest, and that the federal court is empowered to grant the relief sought.

They concede the police power of a state over federal lands within its boundaries unless and until the federal government has asserted its constitutionally paramount power by appropriate statute and regulation. The contention here is simply that by statutes and regulations the federal government has effectively asserted its jurisdiction to regulate the exploration, development, and conservation of these federal lands for oil and gas; that federal jurisdiction having been asserted, is exclusive, and consequently only the federal government has jurisdiction over these leases to space or communitize them for oil and gas; and that the state spacing and forced pooling orders are therefore void and invalid insofar as these leases are involved.

In an exhaustive opinion, the trial court recognized the paramount constitutional power and authority of the federal government over public lands, but took the view that the Constitution left to the Congress the determination of when and where and to what extent this power would be exercised.

Turning to the applicable Leasing Act of 1920 (41 Statute 437, 30 U.S.C. §181 et seq). and particularly to §187, the court could find nothing in the statutes indicating a Congressional intent to assert exclusive control of federal lands leased for oil and gas development. Specific reference was made to that part of §187 which provides that "none of such provisions shall be in conflict with the laws of the State in which the leased property is situated." Reference was also made to that part of §180 of the Leasing Act, which provides:

"Nothing in said section shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

Reference was then made to applicable federal case law to the effect that State law and the State police power extends over the federal public domain within its boundaries until preempted, and only to the extent preempted, by federal law. Thus in determining the extent to which its exclusive federal control is extended over public lands within a State, the court noted that while the Congress may not elect to assume exclusive control, it may in its discretion prescribe certain limited controls, and that Congress had not undertaken to assume exclusive control but has imposed two significant conditions which must be satisfied before the State police power in the field of conservation may be ultimately effected. The court then noted that one of the conditions of federal control is that a federal mineral lessee may not assign his lease without the consent of the Secretary of Interior. See §187. And that a pooling or communitization agreement involving federal and non-federal lands must also be approved by the Secretary or his designee. See Title 30 C.F.R. 221. The court recognized that the challenged pooling order did effect the transfer or assignment of the working interest involved to Phillips for the prescribed bonus and effected a communitization or a pooling of the leases in the spacing unit. But the court was of the opinion that the evidence showed without dispute that the federal government approved the transfer of the working interest as effected by the pooling order of the Oklahoma Corporation Commission, and had approved the communitization of the leases in the spacing unit, thus satisfying the asserted limited federal controls.[1]

---

[1] Pursuant to administrative proceedings before the Bureau of Land Management, Chief of the Branch of Mineral Adjudication recognized the effect of the Oklahoma Corporation Commission's orders, and the following quote from his decision is pertinent:

"Accordingly, Corporation Commission Order No. 51093 [actually referring to Order No. 54373 (R. 933)] is hereby recognized as effecting a transfer by operation of Oklahoma law, of the working interest of Mr. Connell to Phillips Petroleum Company in Lots 1, 4, 5,

The court was finally of the opinion that the action of the federal authorities was consonant with the applicable regulation, and could find "no significant threat to any identifiable federal policy or interest." Judgment was entered dismissing the action for failure to state a claim upon which relief could be granted.

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[1] (Continued)

8 and 9, Sec. 18, T. 17 N., R. 25 W.I.M., Oklahoma in the production of gas and gas condensate from the Tonkawa Sands formation, restricted to the existing well drilled under the authorization of order 51093. Record title will remain in the name of Thomas Connell."

An appeal to the Director of the Bureau of Land Management resulted in the following order, quoted in part:

"By its Corporation Commission, the State of Oklahoma has acted in a manner normally within its competence in dealing with conservation of oil and gas. The effects of its actions are not inconsistent with any Federal law or regulation. The right of the United States to receive royalty based on production of oil or gas from the leasehold has not been impaired or infringed. The Order affects only the activity of the lessee. Furthermore, the Geological Survey has indicated willingness to approve the communitization agreement proposed by Phillips for all section 18, T. 17 N., R. 25 W., I.M., and has concurred in the drilling and spacing unit established by the Commission. The assertion that Federal authority over federal leases has been abdicated is unfounded.

"The Order No. 54373 of the Oklahoma Corporation Commission was certified to the land office as being final in all respects. Accordingly, recognition by the land office of the transfer of the working interest set forth in the said Order from Thomas Connell to Phillips Petroleum Company was proper."

The testimony of the Supervisor of the local office of the United States Geological Survey is also pertinent. He was asked whether applicable regulations required a federal oil and gas lessee to comply with applicable state law:

"Q. Taking the situation involved in this present lawsuit where the Oklahoma Corporation Commission had entered a spacing order, 640 acres for the Tonkawa formation and as was in this case, the Oklahoma Corporation Commission designated the well location and the well was drilled, and, as you know, the federal leasee did not choose to cooperate or participate, is it your position that the federal leasee is under an obligation pursuant to the terms of his lease and the regulations to cooperate and to abide by the applicable state law, which we have just defined as including the spacing laws, and that if he failed to do so, you would recommend cancel-

[APPENDIX]

Our examination of the applicable law leads us to an affirmance of the judgment for the reasons stated in the trial court's opinion, — F. Supp. —.

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[1] (Continued)

lation of the lease? A. With qualifications, provided he took no alternative action which may have been available to him.

* * * * * *

Q. Yes. And you would not have required or permitted him to have drilled a well which would be in violation of the applicable state law, to-wit, the spacing? A. Not in this case we didn't consider that it would be proper to do so, no.

Q. And where there is valid spacing, or where there is spacing as the Oklahoma Corporation Commission did in this case and there is an existing well but not on federal lands, you would not permit a federal leasee to drill in violation of that law for that spacing order? A. For oil and gas in the Tonkawa sand, 640 acres we recognize as the spacing.

Q. Yes. And you recognize this as the spacing prior to the execution of the communitization agreement? A. Yes, we recognized it as proper spacing prior to the communitization agreement."

APPENDIX B

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Vera L. Howard
Clerk, U. S. District Court
By Abie Faye Johnson
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TEXAS OIL AND GAS CORP., a corporation, and JOHN H. HILL, an individual, Plaintiffs,	
vs.	No. 66-241 Civil
PHILLIPS PETROLEUM COMPANY, a corporation, Defendant.	

MEMORANDUM OPINION

Plaintiffs own oil and gas leases on federal lands situated in Oklahoma. The Federal Government executed these oil and gas leases pursuant to the Federal Mineral Leasing Act of 1920, as amended, Title 30, United States Code, Section 181 et seq.

The Corporation Commission of the State of Oklahoma issued its Order by which the Tonkawa formation underlying said oil and gas leases was forced pooled and pursuant thereto the working interests under said leases as to said formation are now owned by the defendant Phillips

Petroleum Company.[1] The force pooling statutes of Oklahoma have been held a constitutional exercise of the police power of the State in the interest of oil and gas conservation and prevention of waste. *Anderson* v. *Corporation Commission*, 327 P. 2d 699, cert. denied 158 U. S. 642, 79 S.Ct. 536, 3 L. Ed. 2d 567 (1959).

The Plaintiffs assert herein that said forced pooling Order of the Oklahoma Corporation Commission is void as to their working interests in the Tonkawa formation because the lands involved to which their oil and gas leases pertain belong to the United States and that by virtue of Article IV, Section 3, Clause 2 of the United States Constitution, Title 30, United States Code, Sections 181, 184, 187a and 188 (Federal Mineral Leasing Act of 1920, as amended), and certain rules and regulations promulgated by the Secretary of the Interior (Title 30, Chap. II, Code of Federal Regulations (Revised as of January 1, 1967), Section 221), exclusive control over said lands resides in the United States Government to the exclusion of the State of Oklahoma. Plaintiffs request that their title in said lands be quieted by declaring said Oklahoma Corporation Commission Order to be null and void.

Jurisdiction is present in this Court by reason of a substantial controversy between the parties which arises under the above mentioned clause of the United States Constitution, the above enumerated statutes of the Federal Mineral Leasing Act of 1920, as amended, and said rules and regulations of the Secretary of the Interior. 28 U.S.C. 1331(a). The Court finds the required jurisdictional amount to be involved.

---

[1] Under Oklahoma law any lessee in a drilling and spacing unit can initiate a force pooling request before the Oklahoma Corporation Commission. If a lessee elects not to participate in the cost of drilling the well he is compensated by a monetary bonus determined by the value of his interest in the formation involved and his working interest therein is transferred by operation of law to the one initiating the forced pooling proceeding. Royalty interests are not affected by this proceeding.

The Defendant by way of defense herein asserts that this identical matter in controversy has been decided in favor of the Defendant in a decision by the Chief, Branch of Minerals Adjudication, Bureau of Land Management, Department of the Interior, United States of America; that if this action is an attempt to accomplish a judicial review of the above decision the same is improper as all administrative remedies were not exhausted by the Plaintiffs; that said administrative proceedings undertaken by Plaintiffs constituted an election of remedies and is a bar to this proceeding; that the Secretary of the Interior as the appropriate representative of the United States is an indispensable party and has not been joined herein; that the Plaintiff John H. Hill, an individual, is not a real party in interest; that the owner of the leasehold estates involved herein failed to appeal from the forced pooling Order of the Oklahoma Corporation Commission, and Plaintiffs, as successors in interest, are now estopped to proceed in this Court to attack said Order; that the Plaintiffs have acquired their interests at such time as to condemn them as not proceeding herein with clean hands; that the United States of America has approved the communitization of the leases involved and the Plaintiffs are bound thereby; that the Oklahoma Corporation Commission had jurisdiction to space federal lands and force pool the interest of federal lessees therein; that if the Federal Government by action of the Congress has exercised any controls in this regard, the same have been fully satisfied in this case; that in either of the foregoing events the forced pooling Order of the Oklahoma Corporation Commission herein is valid; that the Plaintiffs have no standing to assert or utilize any of the powers or prerogatives of the Federal Government and collaterally attack herein said forced pooling Order; that Plaintiffs' action for one or all of the above reasons should be dismissed, and by counterclaim filed herein the Defendant asks that its title and interest in the lands involved be quieted against both Plaintiffs.

[APPENDIX]

Article IV, Section 3, Clause 2 of the United States Constitution provides:

> "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; * * *."

This clause does not place the exclusive control of the federal public domain in the United States Government. It only confers this power on Congress and leaves to Congress the determination of when and where and to what extent this power will be exercised. *United States* v. *Hatahley*, (Tenth Cir. 1955), 220 F. 2d 666, reversed on other grounds, 351 U. S. 173, 76 S. Ct. 745, 100 L. Ed. 1065 (1956). Therefore, we must look to the acts of Congress and specifically those relied upon by the Plaintiffs as above set out to ascertain if the Congress has undertaken to exercise exclusive control over federal lands which have been leased by the Government for oil and gas mining purposes.

Nothing in these cited statutes (nor the entire Act itself) specifically indicates that Congress has undertaken to reserve unto itself exclusive control over federal lands leased for oil and gas development to the exclusion of the States.

Section 187 does provide that no lease issued under the said Act shall be assigned or sublet except with the consent of the Secretary of the Interior, and authorizes the Secretary of the Interior to promulgate rules for the prevention of undue waste and that the lease shall contain a provision that such shall be observed. However, said Section further provides at the end thereof that: "None of such provisions shall be in conflict with the laws of the State in which the leased property is situated." This language is not aimed at putting the lands under the exclusive control of the Federal Government to the exclusion of the States. Contrary to the position of the Plaintiffs, the Fed-

eral Mineral Leasing Act of 1920, as amended, seems to leave to the States the power to exercise State police power over Federal oil and gas leases. For instance, Title 30, United States Code, Section 189 of said Act provides:

> "Nothing in said sections shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

Furthermore, the authorities treating with the matter of exclusive control of federal lands by the Federal Government clearly and definitely hold that State law and the State police power extends over the federal public domain unless and until Congress has determined to deal exclusively with the subject. *State of Colorado* v. *Toll*, 268 U. S. 228, 45 S.Ct. 505, 69 L. Ed. 927 (1925); *McKelvey* v. *United States*, 260 U. S. 353, 43 S.Ct. 132, 67 L. Ed. 301 (1922); *International Bridge Company* v. *People of the State of New York*, 254 U. S. 126, 41 S.Ct. 56, 65 L. Ed. 176 (1920); *Omachevarria* v. *State of Idaho*, 246 U. S. 343, 38 S.Ct. 323, 62 L. Ed. 763 (1918); *United States* v. *Hatahley*, supra.

But whereas the Congress may not desire to assume exclusive control over the federal lands it may desire to prescribe certain limited controls. From an examination of the said Federal Mineral Leasing Act the Court concludes that the Congress has not undertaken to assume exclusive control of federal mineral lands under the Act but it has imposed two significant controls which must be satisfied before the State police power in the area of conservation may ultimately attach. One is that a federal mineral lessee may not assign his lease without the consent of the federal government. 30 U.S.C. 187. Another is that a pooling or communitization agreement involving federal and non-federal lands must be approved by the federal government.

30 U.S.C. 226(j). The forced pooling Order involved herein, with no election being made by the federal lessee to participate in the cost of drilling the well, did effect the transfer or assignment of the working interests involved herein to the Defendant by operation of law for the prescribed monetary bonus and did bring about a communitization or pooling of the leaseholds in the spacing unit as to the Tonkawa formation. However, the evidence herein reveals without dispute that the federal government approved the transfer of the working interests involved herein to the Defendant by the forced pooling Order, of the Oklahoma Corporation Commission and approved the communtization of the leases in the spacing unit prescribed by the Oklahoma Corporation Commission. Thus, these limited controls established by Congress have been fully satisfied in this case.

Plaintiffs have pointed to a number of regulations[2] promulgated by the Secretary of the Interior which pertain in a general way and to a certain extent to matters of conservation in the production of oil and gas. Plaintiffs assert that these regulations supplement the Federal Mineral Leasing Act of 1920 and support and justify their position that the Federal Government has undertaken to assume exclusive control over federal mineral lands. But the regulation making power of the Secretary of the Interior, in so far as the Federal Mineral Leasing Act is concerned, is contained in Section 189 of Title 30, United States Code, which section, as above stated, provides that nothing in the sections referred to and to which the Secretary of the Interior may promulgate regulations shall be construed or held to effect the rights of the States or other local authority to exercise any rights which they may have. This limitation on the construction of the sections must also

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[2] These are C.F.R. Title 30, Chapter II, Sections 221.1, 221.2 (n)(1) & (2), 221.5, 221.35, 221.4, 221.20, 221.21, 221.58(a)(e), 221.59, 221.22, 221.26, 221.15, 221.36, 221.27, 221.23, 221.34, 221.61 and 221.32.

apply to any regulations made by the Secretary of the Interior to do any and all things necessary to carry out and accomplish the purposes of said sections. This is to say that since Congress has said that the pertinent sections of the Federal Mineral Leasing Act which it passed shall not be construed to affect the rights of the States or other local authority to exercise any rights which they may have, this must likewise be a limitation on the Secretary of the Interior as to his regulation making authority set out in the same section. It is also significant to note that said regulations were not promulgated exclusively on the authority of the Federal Mineral Leasing Act. They are also founded on authority of 25 U.S.C. 356, 397. 398, 396(d) dealing with the leasing of Indian lands for oil and gas purposes, 30 U.S.C. 306 dealing with the leasing of oil and gas deposits under railroads and other right of way, and 30 U.S.C. 359 dealing with the leasing of mineral deposits within acquired lands of the United States (lands to which the Mineral Leasing laws have not been extended).

Moreover, these regulations provide in section 221.4 that the supervisor[3] is authorized to require compliance with the regulations but that inasmuch as conditions in one area may vary widely from conditions in another area, the regulations are general, and detailed procedure thereunder in any particular area is subject to the judgment and discretion of the supervisor, and to any areal plan of development that may be adopted pursuant to law. A forced pooling order based on a spacing order of the Oklahoma Corporation Commission would be an areal plan of development adopted pursuant to law. Therefore, any detailed procedure under the regulations is subject thereto. Any doubt in this connection is completely dispelled by the approval of the forced pooling order by the Federal Government.

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[3] The supervisor is a representative of the Secretary of the Interior authorized and empowered to supervise and direct oil and gas operations and to perform other duties prescribed in the regulations.

The Court, therefore, concludes that the cited regulations do not apply in this case so as to affect the rights of the State of Oklahoma which cover the same subject matters. These regulations might apply in those States which do not have acceptable conservation laws, perhaps to off-shore drilling and other situations. But by the provisions of the Federal Mineral Leasing Act and the limitation therein that the pertinent sections may not affect State rights, by provisions in the regulations themselves, and the act of the Federal Government in approving the spacing and forced pooling orders of the Oklahoma Corporation Commission in this case, it is concluded that the cited regulations must be so treated.

No cases have been presented or found which hold that the Federal Government through the Congress has determined that it will deal exclusively with leasehold intrests granted or created pursuant to the Federal Mineral Leasing Act of 1920, as amended, and the case of *Wallis* v. *Pan American Petroleum Corp.*, 384 U. S. 63, 86 S.Ct. 1301, 16 L. Ed. 2d 369 (1966), holds that State law applies to such leaseholds where no significant threat to any identifiable federal policy or interest is shown. No such threat can be seen herein in view of the aforementioned approvals granted by the Federal Government which satisfy the federal policy and interest that assignments of federal leases and pooling or communitization of federal leases with non-federal leases must be approved by the federal government. Moreover, no threat can be seen to the royalty interest of the federal government in the lands involved by reason of the forced pooling order since its proportionate share will be received thereunder.

The cases relied upon by Plaintiffs,[4] which deal with attempted State taxation of federal land and interference

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[4] These cases are:

Van Brocklin v. Anderson, 117 U.S. 151, 6 S.Ct. 670, 29 L. Ed. 845 (1886); Utah Power and Light Co. v. United States, 243 U.S. 389, 37 S.Ct. 387, 61 L. Ed. 791 (1917).

with the interests of the Federal Government in its lands, are not in point.

The clause of the Constitution and the Federal Statutes and regulations relied upon by the Plaintiffs contain no specific prohibition against the exercise of the State police power over the working interests of the Plaintiffs in the lands involved. Nor do they evince a Congressional intent to exercise exclusive control over the same. Congress has required federal approval of assignments of its leases and communitization agreements involving its lands with non-federal lands. In this case this approval has been granted.

The Oil and Gas Conservation laws of Oklahoma, including the forced pooling Order involved herein, therefore, apply to the federal lands dealt with herein. In view of this determination, it is unnecessary to treat with the other defenses raised herein.

Therefore, judgment should be entered dismissing the action of the Plaintiffs for failure to assert a claim upon which relief may be granted. Judgment should also be entered on the Counterclaim of the Defendant quieting its title and interest in the lands involved against the Plaintiffs. Counsel for Defendant will prepare an appropriate judgment for signature by the Court.

Dated this 18 day of December, 1967.

Fred Daugherty

Fred Daugherty
United States District Judge

APPENDIX BI

FILED
JAN 9 1968
Vera L. Howard
Clerk, U. S. District Court
By Abie Faye Johnson
Deputy

DJ:jp (8) 12-22-67

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Texas Oil & Gas Corp., a corporation, and John H. Hill, an individual,

Plaintiffs,

-vs-

No. Civ-66-241

Phillips Petroleum Company, a corporation,

Defendant.

JOURNAL ENTRY OF JUDGMENT

On November 20, 1967, this case came on regularly for trial in this Court, the Honorable Fred Daugherty, District Judge, presiding, and the issues were duly tried. The plaintiffs, Texas Oil & Gas Corp., a corporation, and John H. Hill, an individual, were represented by their attorney of record, Mr. George L. Verity. The defendant, Phillips Petroleum Company, a corporation, was represented by its attorneys of record, Mr. Edward J. Fauss and Mr. Don Jemison. On December 18, 1967, this Court filed its memorandum opinion setting forth its findings of fact and conclusions of law as to the action of the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, against the defendant, Phillips Petroleum Company, whereby said plaintiffs sought to

quiet their title to United States Government oil and gas lease BIM 037167 and United States Government oil and gas lease NM 024918 insofar as said leases cover and pertain to the Tonkawa formation in and under Lots 1, 4, 5, 8 and 9 of Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, and also setting forth its findings of facts and conclusions of law as to the counterclaim of the defendant, Phillips Petroleum Company, against the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, wherein said defendant sought to quiet its title to the above described United States Government oil and gas leases insofar as said leases cover and pertain to the Tonkawa formation in and under the above described lands. Now, on this 9 day of January, 1968, based on said findings of fact and conclusions of law as set forth in said memorandum opinion, it is hereby ORDERED, ADJUDGE AND DECREED that the action of the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, against the defendant, Phillips Petrolum Company, be and is hereby dismissed for failure to assert a claim upon which relief may be granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and is hereby rendered in favor of the defendant, Phillips Petroleum Company, on its counterclaim against the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, and each of them, and that the title and possession of the defendant, Phillips Petroleum Company in the United States Government oil and gas lease BIM 037167 and United States Government oil and gas lease NM 024918 insofar as said leases cover and pertain to the Tonkawa formation in and under Lots 1, 4, 5, 8 and 9 of Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma is hereby forever settled and quieted in the defendant, Phillips Petroleum Company, as against all claims and demands by the plaintiffs. Texas Oil & Gas Corp. and John H. Hill, and those claiming or to claim under said plaintiffs, or either of them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, and each of them, have no right, title, lien, estate, encumbrance, claim, assessment or interest, either in law or in equity, in and to the above described oil and gas leases insofar as said leases cover and pertain to the Tonkawa formation in and under the above described lands and that said plaintiffs, and each of them, are hereby perpetually barred and enjoined from asserting any right, title, lien, encumbrance, claim, assessment or interest in and to the above described oil and gas leases insofar as said leases cover and pertain to the Tonkawa formation in and under the above described lands, adverse to the defendant, Phillips Petroleum Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, and each of them, are hereby perpetually forbidden and enjoined from commencing any suit or other action to disturb the defendant, Phillips Petroleum Company, in its possession and title to the above described oil and gas leases insofar as said leases cover and pertain to the Tonkawa formation in and under the above described lands, and from setting up any claim or interest adverse to the title of the plaintiff herein, and from disturbing the defendant, Phillips Petroleum Company, in its peaceful and quiet enjoyment of said oil and gas leases insofar as said leases cover and pertain to the Tonkawa formation in and under the above described lands.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant, Phillips Petroleum Company, recover its costs herein from said plaintiffs and each of them.

Fred Daugherty

FRED DAUGHERTY
United States District Judge

O.K.

Geo. L. Verity

Attorney for Plaintiffs

O.K.

Don Jemison

Attorney for Defendant

JUDGMENT ENTERED IN CIVIL DOCKET FOR JAN 9 1968

Adelaide Holston, Deputy

APPENDIX E

§ 87.1 Common source of supply of oil—Well spacing and drilling units

* * * * * *

Establishment of units

(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma; provided, that the Commission may authorize the drilling of an additional well or wells on any spacing and drilling unit or units or any portion or portions thereof or may establish, re-establish, or re-form well spacing and drilling units of different sizes and shapes when the Commission determines that a common source of supply contains predominantly oil underlying an area or areas and contains predominantly gas underlying a different area or areas; provided further that the units in the predominantly oil area or areas shall be of approximately uniform size and shape, and the units in the predominantly gas area or areas shall be of approximately uniform size and shape, except that the units in the gas area or areas may be of nonuniform size and shape when they adjoin the units in the oil area or areas; provided further that the drilling pattern for such nonuniform units need not be uniform, and provided further that the Commission shall adjust the allowable production within said common source of supply, or any part thereof, and take such other action as may be necessary to protect the rights of interested parties. Any order issued pursuant to the provisions hereof

may be entered after a hearing upon the petition of any person owning an interest in the minerals in lands embraced within such common source of supply, or the right to drill a well for oil or gas on the lands embraced within such common source of supply, or on the petition of the Conservation Officer of the State of Oklahoma. When such a petition is filed with the Commission, the Commission shall give at least fifteen (15) days' notice of the hearing to be held upon such petition by one publication at least fifteen (15) days prior to said hearing, in some newspaper of general circulation printed in Oklahoma City, Oklahoma, and by one publication, at least fifteen (15) days prior to the day of said hearing, in some newspaper printed in the county, or in each county, if there be more than one, in which the lands embraced within the application are situated. Except as to the notice of hearing on such a petition, the procedural requirements of Sections 84 to 135, inclusive, of Title 52, Oklahoma Statutes of 1951, shall govern all proceedings and hearing provided for by this section.

Acreage of unit—Order establishing

(b) In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage to be embraced within each unit and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing, and the following facts, among other things, shall be material:

(1) The lands embraced in the actual or prospective common source of supply; (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be pro-

bative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the correlative rights and obligations of the producers and royalty owners interested therein.

The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area, which shall be uniform except as hereinbefore provided; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information. Subject to other provisions of this act, the order establishing such spacing or drilling units shall direct that no more than one (1) well shall thereafter be produced from the common source of supply on any unit so established, and that the well permitted on that unit shall be drilled at the location thereon as prescribed by the Commission, with such exception as may be reasonably necessary where it is shown, upon application, notice and hearing in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1951, and the Commission finds that any such spacing unit is located on the edge of a pool and adjacent to a producing unit, or for some other reason that to require the drilling of a well at the prescribed location on such spacing unit would be inequitable or unreasonable. Whenever such an exception is granted, the Commission shall adjust the allowable production for said spacing unit and take such other action as may be necessary to protect the rights of interested parties. As amended Laws 1963, c. 121, § 1.

Emergency. Effective June 3, 1963.

* * * * * *

Violations or order—Separately owned tracts or undivided interests—Pooling costs

(d) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well, is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two (2) or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests, and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon.

Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners herein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this Act[1] the owner, or owners, of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lessor to the extent of the remaining one-eighth (1/8) interest

therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then subject to all other applicable provisions of this Act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well, or wells, are completed upon a unit where there are, or may thereafter be, two (2) or more separately owned tracts, any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such spacing unit shall share in the one-eighth (⅛) of all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, in the proportion that the acreage of their separately owned tract or interest bears to the entife acreage of the unit; provided, where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of one-eighth (⅛) of the production, or said lease shall be subject to an overriding royalty, to production payment or other obligation, then the lessee of said lease out of his share of the working interests from the well drilled on said unit, shall sustain and pay said excess royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him. Laws 1947, p. 328, § 1.

APPENDIX G

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF D. E. PINION, APACHE CORPORATION, AND EL PASO NATURAL GAS COMPANY FOR 640-ACRE SPACING FOR GAS AND GAS CONDENSATE WELLS PRODUCING FROM THE TONKAWA FORMATION UNDERLYING TOWNSHIPS 17 NORTH AND 18 NORTH, BOTH IN RANGE 25 WEST, AND TOWNSHIPS 17 NORTH AND 18 NORTH, BOTH IN RANGE 26 WEST, SITUATED IN ELLIS AND ROGER MILLS COUNTIES, OKLAHOMA	CAUSE DC NO. 17,829 ORDER NO. 51093

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma on the 19th day of February, 1963, at 10 o'clock a.m., in the Commission's Courtroom, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Ray C. Jones, Chairman, Harold Freeman, Vice-Chairman, and Wilburn Cartwright, Commissioner, sitting.

Roger R. Scott, Attorney, appeared for D. E. Pinion and Apache Corporation; Richard W. Fowler, Attorney, appeared for El Paso Natural Gas Company; and Ferrill H. Rogers, Conservation Attorney, and Nell Rhodes Fisher, Assistant Conservation Attorney, appeared for the Commission.

The case was called and referred to W. H. Sollers, Trial Examiner, for the purpose of taking testimony and reporting to the Commission.

The hearing in said cause was continued until the 20th day of February, 1963, at which time the Trial Examiner heard the cause and has filed his report recommending that the application be granted, which report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is an application of D. E. Pinion, Apache Corporation and El Paso Natural Gas Company for an order establishing 640-acre drilling and spacing units for the production of gas and gas condensate from the Tonkawa Sand underlying Townships 17 and 18 North, Ranges 25 and 26 West, in Ellis and Roger Mills Counties, Oklahoma.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and no protests have been entered to the granting of the application.

3. That the applicants are the owners of oil and gas interests in the above described area; that heretofore three wells have been drilled within the area which have encountered the Tonkawa Sand at an average depth of some 7800 feet, each of which is productive of gas and gas condensate, and it is the testimony in this cause that by the drilling of said wells a new and separate common source of supply of gas and gas condensate has been found to exist in said formation underlying all or a portion of the above described area.

4. It is further the testimony in this cause that one well will adequately and efficiently drain the recoverable gas and gas condensate from said formation underlying 640 acres and that it is unnecessary to drill wells to said formation on a closer pattern.

5. That an order should be made establishing 640-acre drilling and spacing units for the production of gas and gas condensate from said formation underlying the above described area.

6. That the West side of Townships 17 and 18 North, Range 26 West, lies adjacent to the Oklahoma-Texas boundary and the tier of sections adjacent to said boundary are fractional sections containing on an average of approximately 458 acres each, and in order to get units of an approximately uniform size, the units along this boundary line should be comprised of one and one-half sections each, which will make a unit from 40 to 50 acres in excess of a regular governmental section.

7. That the area covered by this order lies along the Canadian River and the terrain is exceptionally rough, and a wide tolerance should be granted for the location of the well on each unit.

8. That in the interest of securing the greatest ultimate recovery of gas and gas condensate from the pool, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That 640-acre drilling and spacing units be and the same are hereby established for the production of gas and gas condensate from the Tonkawa Sand underlying—

> Townships 17 and 18 North, Ranges 25 and 26 West, in Ellis and Roger Mills Counties, Oklahoma.

2. That each governmental section shall constitute a drilling and spacing unit, except that in the tier of fractional sections along the Oklahoma-Texas boundary said units shall be formed as follows:

In Townships 17 and 18 North, Range 26 West,

Section 5 and the N/2 of Section 8 shall constitute one unit,

The S/2 of Section 8, and Section 17 shall constitute one unit,

Section 20 and the N/2 of Section 29 shall constitute one unit, and

The S/2 of Section 29, and Section 32 shall constitute one unit.

3. That the permitted well shall be located at any point on the unit not closer than 1320 feet to a unit line.

4. That a map be attached hereto marked Exhibit "A" and made a part hereof showing the outline of the area spaced herein, the size and shape of the drilling units and the location of the permitted well in each unit.

5. That all royalty interests within any spacing unit shall be communitized and each royalty owner within any unit shall participate in the royalty from the well drilled thereon in the relation that the acreage owned by him bears to the total acreage in the unit.

6. That in the event there are divided or undivided interests within any unit and the parties are unable to agree on a plan for the development of the unit, then their rights and equities shall be adjudicated by the Commission as provided for by subsection d, Section 87.1, Title 52, 1951 O.S.A.

DONE AND PERFORMED this 20th day of February, 1963.

CORPORATION COMMISSION OF OKLAHOMA

Ray C. Jones

Ray C. Jones, Chairman

[APPENDIX]

Harold Freeman

Harold Freeman, Vice-Chairman

Wilburn Cartwright

Wilburn Cartwright, Commissioner

ATTEST:

Carl B. Mitchell

Secretary

WHS:n

APPENDIX H

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF PHILLIPS PETROLEUM COMPANY FOR AN ORDER POOLILNG GAS AND GAS CONDENSATE INTERESTS IN THE DRILLING AND SPACING UNIT DESCRIBED AS SECTION 18, Township 17 NORTH, RANGE 25 WEST, ELLIS AND ROGER MILLS COUNTIES, OKLAHOMA	) CAUSE CD NO. 19,475	ORDER NO. 54373

REPORT OF THE COMMISSION

This cause come on for hearing before the Corporation Commission of Oklahoma on the 4th day of February, 1964, at 10 o'clock a.m., in the Commission's Courtroom, Capitol Office Building, Oklahoma City, Oklahoma; the Honorable Ray C. Jones, Chairman, Harold Freeman, Vice-Chairman, and Wilburn Cartwright, Commissioner, sitting.

Michael B. Silva, Attorney, appeared for the applicant, Phillips Petroleum Company; and Ferrill H. Rogers, Conservation Attorney, and Nell Rhodes Fisher, Assistant Conservation Attorney, appeared for the Commission.

The case was called and referred to W. H. Sellers, Trial Examiner, for the purpose of taking testimony and reporting to the Commission.

The hearing in said cause was continued from time to time until the 27th day of February, 1964, at which time the Trial Examiner heard the cause and has filed his report

recommending that the application be granted, which report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is an application of Phillips Petroleum Company for an order pooling and adjudicating the rights and equities of the owners of oil and gas leases in Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, for the production of gas and gas condensate from the Tonkawa Sand.

2. That the Commission has jurisdiction over the subject matter herein, that notice has been given in all respects as required by law and no protests have been entered to the granting of the application.

3. That the Commission has established 640-acre drilling and spacing units for the production of gas and gas condensate from the Tonkawa Sand common source of supply underlying this area, and said Section 18 constitutes one of said units.

4. That the applicant is the owner of oil and gas leases, or has an agreement with the owners of oil and gas leases, on all of the minerals in the above described unit except 15.23 per cent thereof which, it is alleged, is owned by Thomas Connell, and the applicant has been unable to agree with the owner of said leasehold interest on a plan for the development of the unit.

5. That the applicant desires to drill a well on said unit for the production of gas and gas condensate from the Tonkawa Sand and asks that the oil and gas leasehold interests in said unit be pooled.

6. That it is the testimony in this cause that the sum of $40.00 per acre should be fixed as a bonus to be paid as mineral compensation in lieu of the right to participate

in the working interest in said well; that the sum of $105,500.00 should be fixed as the approximate cost of drilling and completing said well.

7. That the owner of the outstanding leasehold interest in the above described drilling and spacing unit should be permitted to participate in the working interest in the well to be drilled thereon by paying his proportionate part of the cost thereof, or furnishing satisfactory evidence for the payment thereof, within 30 days from the date of this order; that in the event such owner does not desire to participate in the working interest in said well, he should be paid a bonus in the sum of $40.00 per acre in lieu thereof and said party should be required to elect within 10 days from the date of this order which method he desires to pursue, and in the event he does not make such election, it should be assumed that he has elected to accept a bonus as mineral compensation in lieu of his right to participate in the working interest in said well.

8. That in the interest of encouraging development in the area, securing the greatest ultimate recovery of gas and gas condensate from the pool and protection correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma, as follows:

1. That the oil and gas leasehold interests in Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, are hereby pooled for the production of gas and gas condensate from the Tonkawa Sand, and Phillips Petroleum Company is hereby permitted and authorized to drill and operate the well on said unit.

2. That for the purpose of this order the sum of $105,500.00 is fixed as the cost of drilling and completing said well and in the event there is a dispute as to such

cost after said well has been completed, the Commission retains jurisdiction of this cause for the purpose of redetermining such cost; that the sum of $40.00 per acre is hereby fixed as a fair and reasonable bonus to be paid as mineral compensation in lieu of the right to participate in the working interest in said well.

3. That the owner of the outstanding leasehold interest in said unit shall be permited to participate in the working interest in said well by paying his proportionate part of the cost of drilling and completing the same, or furnishing satisfactory evidence for the payment thereof, within 30 days from the date of this order; that in the event such owner does not desire to participate in the working interest in said well, he shall be paid the sum of $40.00 per acre as mineral compensation in lieu thereof.

4. That the owner of the outstanding leasehold interest in said unit is hereby required to elect, within 10 days from the date of this order, as to which method he desires to pursue in the development of said unit and in the event he does not make such election, it shall be assumed that he has elected to accept a bonus in the sum of $40.00 per acre as mineral compensation in lieu of his right to participate in the working interest in said well.

5. That the applicant shall begin the drilling of the above described well within 90 days from the date of this order and continue the drilling thereof with due diligence to completion or the provisions hereof shall be inoperative and this order null and void.

DONE AND PERFORMED this 4th day of March, 1964.

CORPORATION COMMISSION OF OKLAHOMA

Ray C. Jones

Ray C. Jones, Chairman

Harold Freeman

Harold Freeman, Vice-Chairman

Wilburn Cartwright

Wilburn Cartwright, Commissioner

ATTEST:

Carl B. Mitchell

Secretary

WHS:n

I, ED OVERHOLSER, Secretary of the Corporation Commission of the State of Oklahoma, do hereby certify that this is a true and correct copy of the original on file in this department.

In witness whereof, I hereunto set my hand and affix the seal of the Corporation Commission of the State of Oklahoma. Done, in the office of the Commission this the 3 day of August 1967 Oklahoma City, Oklahoma.

CORPORATION COMMISSION OF OKLAHOMA

By Ed Overholser, Secretary

APPENDIX I

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
Office of the Clerk
Denver, Colorado 80202

William L. Whittaker
Clerk

April 2, 1969

Telephone
303-297-3157

George L. Verity
Ray B. Jones
2220 First National Bldg.
Oklahoma City, Oklahoma 73102

Re: No. 10,059
Texas Oil, et al. v. Phillips Petroleum

Gentlemen:

An order has been entered today denying the petition for rehearing in the caption case.

Yours very truly,

WILLIAM L. WHITTAKER

By: Anne M. Cabot
Anne M. Cabot
Deputy Clerk

amc
cc: Lloyd G. Minter
Edward J. Fauss
Don Jemison
Phillips Petroleum Company
100 Park Avenue Bldg.
Oklahoma City, Oklahoma

Office-Supreme Court, U.S.
FILED
JUL 8 1969
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. [redacted] 243

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

WM. J. ZEMAN
LLOYD G. MINTER
EDWARD J. FAUSS (Counsel of Record)
DON JEMISON
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Oklahoma City, Oklahoma

Attorneys for Respondent,
Phillips Petroleum Company

July, 1969

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 1529

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RESPONDENT'S POSITION

In their Petition for a Writ of Certiorari, petitioners state that the question presented for review is:

> "* * * whether or not state regulatory agencies shall be permitted to regulate the production of oil and gas from Federal lands when a branch of the United States Government exercises regulatory control over the same operations." (page 2 of Petitioners' Petition for Writ of Certiorari.)

However, the respondent's position is that this case presents only a dispute between two private parties concerning the ownership of a portion of the working interest of two Federal oil and gas leases issued by the Secretary of the Interior pursuant to authority vested in him by the

Federal Mineral Leasing Act of 1920, as amended, and that neither the necessary facts nor the necessary parties are present to justify this Court in resolving the purely hypothetical question which petitioners have posed.

STATEMENT OF CASE

This action was instituted by petitioners in the United States District Court for the Western District of Oklahoma. The action involved an effort by the petitioners to quiet their alleged title to a portion of the leasehold interest in two Federal oil and gas leases covering lands located in the State of Oklahoma. These leases were issued by the Secretary of the Interior pursuant to the authority of the Federal Mineral Leasing Act of 1920, as amended. The petitioners challenged the validity of an order of the Oklahoma Corporation Commission, which order ultimately resulted in the transfer by operation of law of a portion of the above-described oil and gas leases to the respondent, Phillips Petroleum Company. The respondent answered denying the claims of the petitioners and pleaded a number of defenses to the petitioners' action, which defenses, summarized very briefly, are as follows:

1. Failure to state a claim upon which relief can be granted;
2. Absence of indispensable parties;
3. The running of the time to seek a judicial review of decisions of the Department of the Interior (Title 30, U.S.C. § 226-2);
4. Estoppel to relitigate issues previously litigated to a final determination;

5. Estoppel to collaterally attack the orders of the Oklahoma Corporation Commission;

6. Estoppel to obtain the equitable relief requested by virtue of the petitioners' own conduct;

7. That the petitioners, by virtue of the terms of the leases under which they claim, the laws applicable thereto, and the action of the United States Government, are bound to recognize the respondent as the owner of the interest claimed by the petitioners;

8. That petitioners have not sought the proper forum for judicial review;

9. That the Doctrine of Election of Remedies bars this action;

10. That one of the petitioners is not the real party in interest; and,

11. That the United States of America is an indispensable party in this action.

In addition, respondent, by counterclaim, sought to quiet its title to the interest in dispute.

The United States District Court for the Western District of Oklahoma, following the trial of the case, entered judgment dismissing the action of the petitioners for failure to assert a claim upon which relief may be granted and quieted title in the respondent to the interest in dispute. The District Court's memorandum opinion and judgment are set forth in Appendix B and B-1, respectively, in the petitioners' Petition for Writ of Certiorari. A minor aspect of the original Journal Entry of Judgment was corrected by a subsequent Order *Nunc Pro Tunc* (App. 1). The decision of the United States Court of Appeals for the Tenth Cir-

cuit which affirmed the District Court decision, is set forth in Appendix A to petitioners' Petition for a Writ of Certiorari.

FACTS[1]

Prior to March 4, 1964, one Thomas Connell was the sole owner of the following described United States Government oil and gas leases insofar as the same covered the designated tracts of land located in Roger Mills and Ellis Counties, State of Oklahoma (Defendant's Exh. 2 [Request for Admissions], R. 191, 829; Defendant's Exhs. 9 and 10, R. 196, 856, 901).

Lease BLM 037167 covering:

> Lots One (1), Four (4), Five (5) and Eight (8) of Section Eighteen (18), Township Seventeen (17) North, Range Twenty-five (25) West;

---

[1] Reference to pages of the Record will be preceded by the prefix "R." Certain facts referred to in this brief were established by respondent introducing into evidence portions of Admission of Facts and Interrogatories answered separately by petitioners. Pages 182-197 of the Record show what portions of the Admissions of Facts and Interrogatories were introduced by respondent. The use of several page numbers to indicate the location of a particular fact in the Record will usually indicate pages of the Record wherein the Admissions of Fact and Interrogatories are contained, and by consulting all the referred to pages of the Record, the reader will be able to verify that the fact was proved as to both petitioners. References to the facts will also be cited in accord with Rule 40, § 2 of the Supreme Court Rules.

The trial court advised the petitioners that their offer of those portions of the Admission of Facts and Interrogatories *not* offered by the respondent would be entertained by the court and rejected if improper and accepted if proper evidence (R. 202). The respondent urges that, for the reasons set forth in its objection on page 200 of the Record, the petitioners' offer should have been, and presumably was, rejected by the court. (See *Lobel* v. *American Airlines, Inc.*, 192 F.2d 217 (2nd Cir. 1951), *cert. denied*, 342 U.S. 945.)

Lease NM 024918 covering:

Lot Nine (9), Section Eighteen (18), Township Seventeen (17) North, Range Twenty-five (25) West.

These leases (Plaintiffs' Exh. 1, R. 171, 394, 395; Plaintiffs' Exh. 2, R. 171, 550, 551, 552) had been issued by the Secretary of the Interior pursuant to authority vested in him by the Federal Mineral Leasing Act of 1920, as amended. Lease NM 024918 was issued May 29, 1956, and Lease BLM 037167 was issued April 23, 1954.

Pursuant to authority vested in it by Title 52 Okla. Stat., § 87.1 (1961) (App. 2), the Oklahoma Corporation Commission, by Order No. 51093 dated February 20, 1963, established 640-acre drilling and spacing units for the production of gas and gas condensate from the Tonkawa Sand underlying Townships Seventeen (17) and Eighteen (18) North, Ranges Twenty-five (25) and Twenty-six (26) West in Ellis and Roger Mills Counties, Oklahoma (which townships include the section of land involved in this lawsuit). The Oklahoma Corporation Commission is a commission created by the Oklahoma Constitution, is a court of record, and is charged with the conservation of oil and gas in the State of Oklahoma. The above-mentioned Order No. 51093 is set out in Appendix G in the petitioners' Petition for a Writ of Certiorari. In said order it was provided that each governmental section therein contained should constitute a drilling and spacing unit except for certain fractional sections not involved in this lawsuit.

Thereafter, one of respondent's attorneys contacted the Office of the Regional Oil and Gas Supervisor for the Geo-

logical Survey, an agency of the United States Department of the Interior, concerning the lands involved in this lawsuit. In response to said inquiry and by letter dated November 5, 1963 (Defendant's Exh. 2, R. 199, 625), said Regional Oil and Gas Supervisor advised respondent, among other things, that:

> "It is our opinion that if you find it necessary to obtain a state order adjudicating and force pooling the leasehold interest of a Federal lessee to drill and operate section 18 in accordance with the established spacing, then, all else being regular, a communitization agreement which contains adequate provisions for the protection of the interests of all parties, including the United States, could be approved without the signature of a Federal lessee who refused to sign. A copy of the appropriate order should be attached to the communitization agreement and by reference made a part thereof as evidence that the leasehold interest of the unsigned party is effectively committed by state statute." (Defendant's Exh. 2, R. 199, 625.)

Following the above, and prior to March 4, 1964, respondent, who along with others, was desirous of drilling to and exploring the Tonkawa formation in and under Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, filed its application with the Oklahoma Corporation Commission for an order pooling and adjudicating the rights and equities of the owners of oil and gas leases in said section for the production of gas and gas condensate from the Tonkawa formation. Said Section 18 included both privately and federally owned lands. Ninety-seven acres of the land included within the section were covered by the two Federal oil and gas leases involved in this lawsuit. On March 4, 1964, pursuant to authority

vested in it by Title 52 Okla. Stat., § 87.1(d) 1961, of the laws of the State of Oklahoma (App. 2), the Oklahoma Corporation Commission entered its Order No. 54373. This Order No. 54373 is set out in Appendix H in the petitioners' Petition for Writ of Certiorari. Said order, among other things, established the right of Thomas Connell, the then-owner of the Federal leases involved in this action, to participate in the drilling of a well on this 640 acres by paying his proportionate part of the costs or accepting from respondent a bonus established by the evidence for his lease-hold interest in the event he elected not to participate. Said order further provided that if Connell did not elect to participate, it would be deemed that he had elected to accept the bonus.

Said Thomas Connell did not elect to participate in the drilling of said well (Defendant's Exh. 2 [Request for Admissions], R. 191, 830; Defendant's Exhs. 9 and 10, R. 196, 856, 901). The time for appealing from Corporation Commission Order No. 54373 to the Oklahoma Supreme Court as authorized by Title 52 Okla. Stat., §§ 111, 112 and 113 (1961) (App. 3), passed without an appeal being taken (Defendant's Exh. 2 [Request for Admissions], R. 191, 830; Defendant's Exhs. 9 and 10, R. 196, 857, 901). The respondent tendered to Thomas Connell the bonus of $40.00 per acre provided for in the Oklahoma Corporation Commission Order No. 54373 (Defendant's Exh. 2 [Request for Admissions], R. 191, 834; Defendant's Exhibits 9 and 10, R. 196, 859, 901). By virtue of Connell's failure to participate, and the terms of said Order No. 54373, his interest in the Tonkawa formation covered by subject leases became the property of respondent (*Anderson* v. *Ellison*, 285 F.2d 484 [10th Cir. 1960]).

Thereafter, petitioners acquired their alleged interests in the oil and gas leases from Thomas Connell with knowledge: (a) that respondent was claiming the ownership of said leases, insofar as they pertained to the Tonkawa formation in and under the lands described in petitioners' Second Amended Complaint, by virtue of the proceedings had before the Oklahoma Corporation Commission; (b) that the claim of ownership by respondent was based on the Oklahoma Corporation Commission Order No. 54373 and the subsequent failure of Thomas Connell to elect within the time permitted by said order to participate in the drilling of the well referred to in said order; (c) that a well (which was drilled on the private lands included in the drilling and spacing unit) had been drilled by the respondent and others in compliance with the Oklahoma Corporation Commission Order No. 54373; and, (d) that said well had been completed as a valuable producer of gas and gas condensate (Defendant's Exh. 2 [Request for Admissions], R. 191, 831; Defendant's Exhs. 9 and 10, R. 196, 857, 901).

After petitioners acquired their purported interest from Thomas Connell, petitioners engaged respondent in proceedings before the United States Bureau of Land Management at Santa Fe, New Mexico (Defendant's Ex. 2 [Request for Admissions], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901), which resulted in a decision by Howard M. Grotberg, Chief, Branch of Mineral Adjudication (Defendant's Exh. 3, R. 193, 930), in which he held that by virtue of the proceedings had before the Oklahoma Corporation Commission, the respondent would be recognized as the owner of the working interest of Thomas Connell in the oil and gas leases in question insofar as the

Tonkawa formation was concerned. The pertinent language of the decision which recognized this change of ownership was as follows:

> "Accordingly, Corporation Commission Order No. 51093 [actually referring to Order No. 54373 (R. 933)] is hereby recognized as affecting a transfer by operation of Oklahoma law, of the working interest of Mr. Connell to Phillips Petroleum Company in Lots 1, 4, 5, 8 and 9, Sec. 18, T. 17 N., R. 25 W.I.M., Oklahoma in the producton of gas and gas condensate from the Tonkawa Sands formation, restricted to the existing well drilled under the authorization of order 51093. Record title will remain in the name of Thomas Connell." (Defendant's Exh. 3, R. 191, 931)

The petitioners appealed this decision to the Director of the Bureau of Land Management, Washington, D.C. (Defendant's Exh. 2 [Request for Admission], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901), and said decision was affirmed in a decision entered by Francis A. Patton, Chief, Branch of Mineral Appeals, Office of Appeals and Hearings (Defendant's Exh. 4, R. 194, 933). The pertinent language contained in the decision affirming the earlier decision is as follows:

> "By its Corporation Commission, the State of Oklahoma has acted in a matter normally within its competence in dealing with conservation of oil and gas. The effects of its actions are not inconsistent with any Federal law or regulation. The right of the United States to receive royalty based on production of oil or gas from the leasehold has not been impaired or infringed. The Order affects only the activity of the lessee. Furthermore, the Geological Survey has indicated willingness to approve the communitization agreement pro-

posed by Phillips for all section 18, T. 17 N. R. 25 W., I.M., and has concurred in the drilling and spacing unit established by the Commission. The assertion that Federal authority over federal leases has been abdicated is unfounded.

"The Order No. 54373 of the Oklahoma Corporation Commission was certified to the land office as being final in all respects. Accordingly, recognition by the land office of the transfer of the working interest set forth in the said Order from Thomas Connell to Phillips Petroleum Company was proper." (Defendant's Exh. 4, R. 194, 935)

Thereafter, the petitioners appealed to the Secretary of the Interior (Defendant's Exh. 2 [Request for Admissions], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901). Said appeal was dismissed upon a stipulation of the parties hereto that in the event either party should file an action in a court having jurisdiction of the controversy with regard to the validity and efficacy of the Oklahoma Corporation Commission Order No. 54373, said court action would be allowed to proceed on the same basis as though the appeal to the Secretary of the Interior had been consummated and a final decision obtained from the Secretary of the Interior affirming the decision of the Bureau of Land Management (Plaintiff's Exh. 3, R. 171, 561).

The petitioners, in the proceedings before the Bureau of Land Management, urged, in opposition to the claim of the respondent, most of the objections urged in their appeal to the United States Court of Appeals for the Tenth Circuit (Defendant's Exhs. 1 and 2 [Request for Admissions], R. 186, 191, 789, 836; Defendant's Exhs. 9 and 10, R. 196, 861; 864). (See instrument at R. 792 and R. 864.)

Subsequent to the entering of the Oklahoma Corporation Commission Order No. 54373 alleged by the petitioners to be null and void, the petitioners themselves instituted proceedings before the Oklahoma Corporation Commission for the purpose of force pooling owners of other Federal oil and gas leases. And, as a result of such proceedings, orders were entered by said Commission force pooling the interests of the owners of Federal oil and gas leases (Defendant's Exh. 2 [Request for Admissions], R. 191, 833; Defendant's Exhs. 9 and 10, R. 196, 859, 903). An example of one such order obtained by the petitioners is Order No. 56909 found at page 941 of the Record, which order was entered on November 24, 1964, only twenty-four days prior to the date of the decision of the Bureau of Land Management in proceedings wherein the petitioners were contending that such orders were null and void. On the 27th day of May, 1966, the United States Department of the Interior, Geological Survey, Tulsa, Oklahoma, by Floyd L. Stelzer, Acting Regional Oil and Gas Supervisor, formally approved and entered into a communitization agreement retroactive to March 18, 1964, wherein the Department of the Interior formally recognized Section 18, Township 17 North, Range 25 West, as comprising one unit for the production of gas and gas condensate from the Tonkawa formation (Defendant's Exhs. 1 and 2 [Request for Admissions], R. 186, 191, 788, 835; Defendant's Exhs. 9 and 10, R. 196, 860, 903). (See instrument R. 803 and R. 875.)

ARGUMENT AND AUTHORITIES

The petitioners do not question the constitutionality of the activities of the Oklahoma Corporation Commission in general (p. 8 of Petition for Writ of Certiorari). However, the petitioners take the position that their predecessor, Thomas Connell, as *the owner of the two Federal leases,* was immune from the force and effect of the Oklahoma Corporation Commission orders described above. The petitioners urge that as to Thomas Connell, the Oklahoma Corporation Commission's force pooling order (set forth in Appendix H of the Petition for Writ of Certiorari) which, upon Mr. Connell's failure to elect to participate in the drilling of the well, operated as a transfer of Mr. Connell's interest to the respondent by operation of law, was a nullity.

Transfers of the interest of Federal oil and gas lessees by operation of State law have been recognized by the courts for years. See, for example, the following cases which, while recognizing the authority of the Secretary of the Interior to approve or disapprove assignments, have uniformly held that this right of the Secretary of the Interior is for the protection and benefit of the Government only and is not available to the individual lessee. *Recovery Oil Co.* v. *Van Acker,* 79 C.A.2d 639, 180 P.2d 436 (Calif. 1947) (suit to quiet title to interests in Federal oil and gas lease); *Routt County Mining Co.* v. *Stutheit,* 101 Colo. 254, 72 P.2d 692 (Colo. 1937) (suit to quiet title to interest in Federal oil and gas lease); *Aronow* v. *Bishop,* 107 Mont. 317, 86 P.2d 644 (Mont. 1939) (suit to quiet title to interest in Federal oil and gas leases); *Rock Island Oil & Refining*

Co. v. *Simmons*, 72 N.M. 142, 386 P.2d 239 (N.M. 1963) (suit to quiet title to claimed equitable interest in Federal oil and gas lease); *Melish Consol. Placer Oil Mining Ass'n* v. *Burksenation Oil Co.*, 163 Okla. 20, 20 P.2d 879 (Okla. 1933) (levy of execution against interests in Federal oil and gas lease acquired by Sheriff's Sale); *Rue* v. *Merrill*, 42 Wyo. 511, 297 Pac. 379 (Wyo. 1931) (suit to quiet title to interest in Federal oil and gas lease); and *Isaacs* v. *DeHon*, 11 F.2d 943 (9th Cir., 1926) (suit to declare defendant trustee for plaintiffs as to specified fractional interest in a Federal oil claim and prospecting permit). The Court, in the *Isaacs* case, *supra*, in construing a regulation which provided that rights to receive a permit were not assignable, observed that:

> "Appellant is in no position to take advantage of this regulation. It may be that plaintiffs will lose the fruits of this litigation by the refusal of the Secretary to approve the assignment of interests in the permit. But appellant is nevertheless held in a court of equity to the obligations he assumed in his grubstake contract." (p. 944)

In addition to the above cases in which the courts have had no hesitation in permitting State law to affect the interest of a Federal oil and gas lessee, this Court, in the case of *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63 (1966), rejected the contention that the court must create a Federal general law governing transactions involving Federal oil and gas leases and chose instead to recognize the applicability of State law to such transactions.

Neither the petitioners nor their predecessor in title, Thomas Connell, exercised the statutory right of appeal

from the Oklahoma Corporation Commission orders complained of (App. 3). Nor, have the petitioners challenged the United States Bureau of Land Management decisions approving the action of the Oklahoma Corporation Commission. Rather, as noted by the United States Court of Appeals for the Tenth Circuit in its decision, the petitioners chose to collaterally attack the Oklahoma Corporation Commission orders insofar as they pertain to the Federal leases in question. Further, as noted by said Court of Appeals in its decision, the petitioners

> "deny that either the Secretary of the Interior or any of his subordinates are necessary or proper parties to the litigation and say that the judgment sought will merely determine the rights of the parties to the suit." (page ii of Appendix A to Petition for Writ of Certiorari.)

Both the United States District Court for the Western District of Oklahoma, and the United States Court of Appeals, found that any conditions imposed by the Federal Mineral Leasing Act of 1920, as amended, had been fully satisfied; that there was no threat to the royalty interest of the Federal Government in the lands involved; and that "no threat to any identifiable federal policy or interest [was] shown." These decisions are contained in Appendices A and B of the Petition for a Writ of Certiorari and are also reported in 277 F.Supp. 366 and 406 F.2d 1303.

It seems apparent, from an analysis of the facts as summarized in this brief and the above-mentioned decisions by the United States District Court for the Western District of Oklahoma and the United States Court of Appeals for the Tenth Circuit, that this case does not involve the

question which the petitioners urge as the basis for this Court granting certiorari, to-wit: whether . . ."state regulatory agencies shall be permitted to regulate the production of oil and gas from Federal lands when a branch of the United States Government exercises regulatory control over the same operations" (p. 2 of Petition for Writ of Certiorari). Even assuming the facts did raise such a question, the parties most vitally interested in such question (the State of Oklahoma and the Secretary of the Interior) are not parties to this action. The question posed by the petitioners has no significance in this lawsuit inasmuch as the United States Bureau of Land Management has approved the action taken by the Oklahoma Corporation Commission, and, by stipulation of the parties, this lawsuit has proceeded on the basis that the Secretary of the Interior would have approved the decisions of the Bureau of Land Management.

As previously stated by the respondent in explaining its position to the Court, this lawsuit involves simply a dispute between two private parties as to the ownership of a portion of two Federal oil and gas leases. The question submitted by the petitioners to this Court is neither applicable nor appropriate for determination by this Court in this lawsuit.

While there is not a United States Supreme Court decision directly in point with the facts of this case, the decision of this Court in the case of *Oklahoma Tax Commission* v. *Texas Co.*, 336 U.S. 342 (1949), *rehearing denied* 336 U.S. 958, sets forth reasoning which seems entirely appropriate to this case. The *Oklahoma Tax Commission* case, *supra*, dealt with the question of whether a lessee of

mineral rights in allotted and restricted Indian lands is immunized by the United States Constitution against payment of a State gross production tax. The Court, in an opinion by Justice Rutledge, observed that:

> "It may be taken that they (lessees) have operated the leases in *conformity with the applicable regulations of the Department of the Interior and of the State of Oklahoma,* except for the payment of the state taxes in question." (336 U.S. at 345) (Emphasis added.)

Then Justice Rutledge went on to justify the imposition of the tax on the lessees with the following statement:

> "Moreover, even if the status of respondents as federal instrumentalities, in the sense in which they use the term, were fully conceded, it seems difficult to imagine how any substantial interference with performing their functions as such in developing the leaseholds could be thought to flow from requiring them to pay the small tax Oklahoma exacts to satisfy their shares of the state's expense in maintaining and administering its proration program. *That system works for respondents' benefit in performing their producing function, as it does for the benefit of all other producers by stabilizing production, eliminating waste, and preventing runaway competition in an industry notorious for those evils in the absence of some control. * * * Indeed respondents do not claim they are exempt from the plan's regulatory features. They claim only that they are constitutionally immune from contributing to the plan's support. As a matter entirely fresh, the contention would not seem weighty."* (336 U.S. at 351 (Emphasis added.)

CONCLUSION

It is respondent's position that this lawsuit involved only a dispute between private parties as to the ownership of a portion of two Federal oil and gas leases and as such does not present an important question of Federal law which should be reviewed by this Court. Further, the parties who would be most vitally concerned with the Court's treatment of the hypothetical question posed by the petitioners, to-wit: the State of Oklahoma and the Secretary of the Interior, are not parties to this action. The fact that these parties are not present is because the petitioners and their predecessor, Thomas Connell, voluntarily elected to ignore these parties and instead attempted to collaterally attack the Oklahoma Corporation Commission orders and the Bureau of Land Management's decisions by bringing a quiet title action against the respondent rather than challenge the orders of said State and Federal agencies by appeal from said agencies' orders and decisions.

It is, therefore, respectfully submitted that the requested Writ of Certiorari should be denied.

Respectfully submitted,

WM. J. ZEMAN
LLOYD G. MINTER
EDWARD J. FAUSS (Counsel of Record)
DON JEMISON
100 Park Avenue Building
Oklahoma City, Oklahoma

Attorneys for Respondent,
Phillips Petroleum Company

July, 1969

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Texas Oil & Gas Corp., a corporation, and John H. Hill, an individual, Plaintiffs,

—vs—

No. Civ. 66-241

Phillips Petroleum Company, a corporation, Defendant.

ORDER NUNC PRO TUNC

Now, on this 30 day of January, 1968, it appearing to this Court that heretofore on the 9th day of January, 1968, judgment was entered herein and filed herein under the designation Journal Entry of Judgment, that said judgment, among other things quieted the title and possession of the defendant, Phillips Petroleum Company, in United States Government Oil and Gas Lease BLM 037167 and United States Government Oil and Gas Lease NM 024918 insofar as said leases cover and pertain to the Tonkawa formation in and under Lots 1, 4, 5, 8 and 9 of Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, against all claims and demands by the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, and those claiming or to claim under said plaintiffs, or either of them, that due to clerical oversight, the 7th line of the 4th paragraph of the above described journal entry contains the word "plaintiff" rather than the word "defendant."

THEREFORE, IT IS NOW ORDERED, ADJUDGED AND DECREED that as of the 9th day of January, 1968, the word "plaintiff" in the 7th line of the 4th paragraph of the above described journal entry of judgment be stricken

therefrom and the word "defendant" be inserted in place thereof.

Dated this 30 day of January, 1968.

/s/ Fred Daugherty
United States District Judge

O.K.

Attorney for Plaintiffs

O.K.

/s/ Don Jemison
Attorney for Defendant

FILED Jan 30 1968
Vera L. Howard
Clerk, U. S. District Court
By /s/ Alie Faye Johnson
Deputy

ATTEST: A true copy of the original
Vera L. Howard, Clerk
By /s/ Cecil A. Qualls
Deputy

APPENDIX 2

Title 52, Okla. Stat., § 87.1

§ 87.1 Common source of supply of oil—Well spacing and drilling units

Whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste or drainage not compensated by counterdrainage, then any person having the right to drill into and produce from such common

source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

Establishment of units

(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, or oil or gas within the State of Oklahoma. Such order establishing well spacing or drilling units for a common source of supply may be entered after a hearing upon the petition of any person owning an interest in the minerals in lands embraced within such common source of supply, or the right to drill a well for oil or gas on the lands embraced within such common source of supply, or on the petition of the Conservation Officer of the State of Oklahoma. When such a petition is filed with the Commission, the Commission shall give at least fifteen (15) days' notice of the hearing to be held upon such petition by one publication at least fifteen (15) days prior to said hearing, in some newspaper of general circulation printed in Oklahoma City, Oklahoma, and by one publication, at least fifteen (15) days prior to the date of said hearing, in some newspaper printed in the county, or in each county, if there be more than one, in which the lands

embraced within the application are situated. Except as to the notice of hearing on such a petition, the procedural requirements of Sections 84 to 135, inclusive, of Title 52, Oklahoma Statutes of 1941, shall govern all proceedings and hearing provided for by this section.

Acreage of unit—Order establishing

(b) In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage to be embraced within each unit and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing and the following facts, among other things, shall be material:

(1) The lands embraced in the actual or prospective common source of supply (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the correlative rights and obligations of the producers and royalty owners interested therein.

The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area, which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information. Subject to other provisions of this Act, the order establishing such spacing or drilling units shall direct that no more than one

(1) well shall thereafter be produced from the common source of supply on any unit so established, and that the well permitted on that unit shall be drilled at the location thereon as prescribed by the Commission, with such exception as may be reasonably necessary where it is shown, upon application, notice and hearing in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, and the Commission finds that any such spacing unit is located on the edge of a pool and adjacent to a producing unit, or for some other reason that to require the drilling of a well at the prescribed location on such spacing unit would be inequitable or unreasonable. Whenever such an exception is granted, the Commission shall adjust the allowable production for said spacing unit and take such other action as may be necessary to protect the rights of interested parties.

Decrease of size of units—Additional wells—
Enlargement of area—Size of units
at various depths

(c) The commission shall have jurisdiction upon the filing a proper application therefor, and upon notice given as provided in subsection (a) above, to decrease the size of the well spacing units or to permit additional wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source of supply, or to enlarge the area covered by the spacing order, if such proof discloses that the development or the trend of development indicates that such common source of supply underlies an area not covered by the spacing order. The commission shall not establish well spacing units of more than forty (40) acres in size covering common sources of supply of oil the top of which lies less than 5,000 feet below the sur-

face as determined by the original or discovery well in said common source of supply. The commission shall not establish well spacing units of more than eighty (80) acres in size covering common sources of supply of oil the top of which lies less than 9,990 feet and more than 5,000 feet below the surface as determined by the original or discovery well in said common source of supply. As amended Laws 1959, p. 217, § 1.

Violations of order—Separately owned tracts or undivided interests—Pooling costs

(d) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well, is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two (2) or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests, and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. All orders requiring such pooling shall be made after notice and hearing, and

shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners herein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or

proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this Act the owner, or owners, of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lessor to the extent of the remaining one-eighth (1/8) interest therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then subject to all other applicable provisions of this Act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well, or wells, are completed upon a unit where there are, or may thereafter be, two (2) or more separately owned tracts, any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such spacing unit shall share in the one-eighth (1/8) of all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, in the proportion that the acreage of their separately owned tract or interest bears to the entire acreage of the unit; provided, where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of one-eighth (1/8) of the production, or said lease shall be subject to an overriding royalty, to production payment or other obligation, then the lessee of said lease out of his share of the working

interests form the well drilled on said unit, shall sustain and pay said excess royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him. Laws 1947, p. 328, § 1.

APPENDIX 3

Title 52, Okla. Stat., § 111

§ 111. Collateral attack on orders, rules and regulations—Appeals—Supreme Court

No collateral attack shall be allowed upon orders, rules and regulations of the Commission made hereunder, but the sole method of reviewing such orders and inquiring into and determining their validity, justness, reasonableness or correctness shall be by appeal from such orders, rules or regulations to the Supreme Court. On appeal every such order, rule or regulation shall be regarded as prima facie, valid, reasonable and just. No court of this State except the Supreme Court, and it only on appeal, as herein provided, shall have jurisdiction to review, reverse, annul, modify or correct any order, rule, or regulation of the Commission within the general scope of its authority herein or to enjoin, restrain or suspend execution or operation thereof, provided that writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would under like circumstances lie to any inferior court or officer. Laws 1933, ch. 131, p. 292, § 28.

[APPENDIX]

Title 52, Okla. Stat., § 112

§ 112. Application to amend or modify orders—Hearing—Appeal

Any person affected by any Legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this Act. An appeal shall lie to the Supreme Court from any order made by the Commission in any such proceedings or from the refusal of the Commission to make any order petitioned for therein, in the same manner and within the same time in which other appeals are authorized to be taken by the provisions of this Act, and, on any such appeal, the Supreme Court may affirm the order of the Commission, or the Commission's action in refusing to make the order petitioned for, or may itself make the order which the Commission should have made, or remand the cause to the Commission with directions to make such order as the Supreme Court may determine should have been made. Laws 1933, ch. 131, p. 292, § 29.

Title 52, Okla. Stat., § 113.

§ 113. Appeals—Power of Supreme Court—Supersedeas—Bond

In the manner now provided by law for taking appeals to the Supreme Court from orders, rules or regulations of the Commission affecting transportation and transmission companies, appeals may be taken to the Supreme Court from any order, rule or regulation made, issued or promulgated by the Commission under the provisions of Section 1 to 13, inclusive, (a) by the Attorney General, or (b) by the Proration Attorney, or (c) by the Proration Umpire, on behalf of the State; or by any person aggrieved by such

order, rule, or regulation appealed from. On such appeal the Supreme Court shall have power to determine the validity, the reasonableness and justice of such order, rule, or regulation, and should the Court find from the record that the order, rule or regulation appealed from is incorrect, unreasonable, unjust or insufficient in any particular it shall amend, modify, or supplement such order, rule or regulation so as to make the same correct, reasonable, just or sufficient, or shall substitute therefor such order, rule, or regulation as in the Court's opinion is warranted by the record, is reasonable and just, and will effect the purposes and intent of this Act. On such appeals no order, rule or regulation shall be reversed and remanded to the Commission for a new trial thereon or for the taking of additional testimony unless the Court shall find that the evidence introduced before the Commission is insufficient to enable the Court to determine and make a proper order, rule, or regulation or that the party appealing did not have lawful notice of the hearing before the Commission, or that the Commission refused to receive competent evidence offered by the party appealing, which, if true, would leave the order, rule or regulation appealed from without substantial basis in fact. In like manner appeal may be taken to the Supreme Court from any order, judgment or decree issued, or final action taken by the Commission in any proceeding before it wherein it is sought to have any person adjudged (a) guilty of direct contempt, or (b) punished as for contempt for violation of any provision of this Act or of any order, rule or regulation of the Commission made hereunder, or (c) in which is sought any other order of enforcement for the purpose of enforcing the orders, rules, and regulations of the Commission made hereunder, provided any such appeal may be taken and prosecuted only by (a) the Attorney General, or (b) the Proration Attorney, or (c) the Proration Umpire, on behalf of the State, or (d) by any person against whom any such order or decree of contempt, or as for contempt, or other order of

enforcement shall have been rendered, or (c) by any other person whose interests are affected by such order, judgment, decree or final action taken by the Commission in such proceeding and who is aggrieved thereby.

No order, rule, regulation, judgment or decree or final action of the Commission appealed from shall be superseded except by order of the Commission or the Supreme Court. No supersedeas shall be granted by either the Commission or the Supreme Court except upon condition that the appellant shall file in said appeal a bond with such surety as shall be approved by the Commission or the Supreme Court, granting such supersedeas. Said bond shall, (a) be in such amount, (b) contain such terms and conditions and (c) be payable to the State for its benefit or for the benefit of such person or persons as shall be damaged by such appeal, if the order, rule, regulation, judgment, decree or action of the Commission appealed from shall be affirmed; all as shall be provided and required by the Commission or the Supreme Court granting such supersedeas.

All appeals under the provisions of this Act must be taken within 60 days from the date on which the order, rule, regulation, judgment, decree or final action of the Commission appealed from shall have been made, rendered or taken by the Commission; and except as otherwise provided in this Act, the hearing and determination thereof by the Supreme Court, and the enforcement of its judgment and decree therein, and against the sureties upon the supersedeas bond therein, shall be governed by the provisions of law now in force applicable to appeals in proceedings for contempt and other proceedings for the violation of orders, rules and regulations of the Commission affecting transportation companies; and to the extent possible under existing laws the Supreme Court shall give precedence to all such appeals in the hearing and disposition thereof. Laws 1933, ch. 131, p. 293, § 30.